

**PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING  
THURSDAY, JUNE 21, 2007  
CITY HALL, 8<sup>TH</sup> FLOOR  
COMMISSION CONFERENCE ROOM**

**BOARD MEMBERS PRESENT**

Mehrdad "Mike" Fayyaz, Assistant City Engineer, Acting Chairman  
Mark Darmanin, Utilities Distribution, and Collections Manager  
Bob Dunckel, Assistant City Attorney III  
Tony Irvine, City Surveyor  
Tom Terrell, Public Works Maintenance Manager  
Anthony Fajardo, Planner II  
Carol Ingold Mordas, Parks Supervisor

**STAFF AND GUESTS**

Victor Volpi, Senior Real Estate Officer  
Barbara Howell, WaterWorks 2011  
Yvonne Davidson, Planner II  
Kirill Pivovarov  
Steve Boteck  
Travis Woods, Recording Clerk, Prototype Inc.

**CALL TO ORDER**

Mr. Fayyaz called the meeting to order at 10:07 a.m. and stated this was a Committee with the responsibility of advising the City Manager and City Commission on matters connected with City property and public right-of-way.

Following roll call, it was determined that a quorum was present.

**ITEM ONE:**                      **APPROVAL OF MAY 17, 2007 MINUTES**

Mr. Volpi stated that Ella Parker had requested changes to the minutes. Several comments attributed of Linda Strutt were also questioned. Mr. Dunckel asked if the proposed changes had been reviewed, cautioning that new language regarding matters not discussed could not be added to minutes, although the minutes may be refined to more accurately reflect what was discussed. A suggestion was made to relisten to the audio of the meeting. Mr. Volpi and Mr. Fayyaz indicated that the minutes were not consistent with their recollection; however, the substance of the discussion was not changed. Mr. Irvine requested a verbatim transcript of those portions of the meeting in question. It was Mr. Dunckel's suggestion that the minutes be approved with the exception of the one item to be clarified.

**Motion** made by Mr. Darmanin, seconded by Mr. Irvine, to accept the minutes as presented with the exception of Item 3 which will be tabled until a verbatim transcription of Item Three can be compared to the meeting minutes. In a voice vote, the motion passed unanimously.

**ITEM TWO:**                      **STAGING AREA**

Address or General Location: 2890 W Broward Boulevard

It was noted that the arrows on the aerial were pointing in the wrong direction, although Mr. Penta assured they would be on the proper side, with the entrance on NW 30<sup>th</sup> Avenue. Mr. Dunckel pointed out that this is an unusual circumstance where the Committee is sitting in a quasi-judicial capacity in conjunction with the Site Plan Level I review, taking their instructions from the criteria in the ULDR. With regard to vacation of rights-of-way, they do not have to consider ULDR criteria and are permitted to make their determinations with free associations, attaching whatever conditions they deem appropriate in light of utility and right-of way issues, etc. He stated it would be appropriate for the Committee to attach such conditions to their review.

Mr. Volpi pointed out it is illegal to turn off of NW 30<sup>th</sup>, and it will be necessary to go to 31<sup>st</sup> to turn left. Mr. Dunckel added, on the second staging area application, the site plan showing the parking has a note that the materials may not be stacked any higher than the height of the fence; commenting that he did not see a similar notation on the application and further asking what type of material will constitute the fill storage. Mr. Penta indicated it will be fill dirt piled approximately ten feet high, which will be moved in and out frequently. Mr. Dunckel was not concerned about the dirt being higher than the top of the fence, but did want a requirement for the materials to remain below the fence line. It was suggested by Mr. Irvine that the fill be no higher than ten feet and moved within 48 hours.

Mr. Dunckel advised it would be acceptable to approve the request and delegate the review of the traffic plan to Engineering.

**Motion** made by Mr. Terell, seconded by Mr. Irvine, to accept the application with the following exceptions: 1) the traffic plan be resubmitted and approved by the City Engineer or his office, and 2) the materials height be limited to the height of the fence; and the fill height be limited to no more than the height of the fence and stored for a maximum for 48 hours. In a voice vote, the motion passed unanimously.

It is the intent of the Committee that the MOT be reviewed and approved prior to submission to the department for site plan. Mr. Fajardo also mentioned that several technical requirements have not been met and will also be reviewed.

**ITEM THREE:**                      **STAGING PERMIT**

Address or General Location: NE 55 Court and NE 22 Avenue

In response to Mr. Dunckel's question regarding the use of Lot 18, Ms. Howell stated that currently there is nothing at that location as a nearby church is allowing storage in their lots. Mr. Dunckel suggested the Committee impose restrictions on the use of Lot 18 rather than "signing a blank check," in terms of allowing vehicle storage, but prohibiting storage of materials. Mr. Irvine inquired whether, in the future if they found they needed to also store materials an amendment could be requested and was advised by Mr. Dunckel that they could request to amend how they want to use the site plan.

**Motion** made by Mr. Irvine, seconded by Mr. Dunckel, to recommend acceptance of the staging permit as submitted, with a restriction on the Lot 18 portion that only vehicles, but no materials, be stored on that portion of Lot 18 as shown on the drawing. In a voice vote, the motion passed unanimously.

**ITEM FOUR:**                      **DISCUSSION – Policies and Procedures Regarding Overpasses**

Address or General Location: N/A

Deferred due to the absence of Mr. Partington.

**ITEM FIVE:**                      **ENCROACHMENT AGREEMENT/BROWARD COUNTY AND LAS OLAS & ANDREWS, LLC**

Address or General Location: northwest corner of S Andrews Avenue and Las Olas Boulevard

Mr. Lochrie provided a background on the project indicating that it has been approved by the Planning & Zoning Board, the City Commission, and the County Commission. He stated currently the City's new Master Plan Guidelines conflict with the County's Guidelines; however, in working with the County, they had agreed that 30' was not required at this location and okayed it at 25'. They had also agreed that above 20', the developer could encroach into the area as there was no need for the additional protection. The County Commission has required the developer to enter into an agreement with City acknowledging the County's

requirements, with the specifics of the agreement indicating that the City will not issue building permits until the County has had a chance to review them. The City will be indemnified. Without the agreement, the developer will not be able to move forward as the County does not issue building permits; permits are under the City's purview. Under the proposed agreement, the City will not be responsible for maintaining the right-of-way, landscaping, etc.

Mr. Dunckel pointed out that the document presented showed the entire location as County right-of-way; he questioned whether that was an appropriate assumption. Mr. Lochrie stated also that his client had concurred with Mr. Dunckel's assumption and had challenged the County's position; however, the County Attorney for the Planning Council produced materials showing that the County Land Use Plan includes the street and corner cords on City streets which abut County streets. Mr. Dunckel suggested that that provision of the Land Use Plan may be in conflict with Chapter 337 with regard to transfer of jurisdictions, proposing that a similar agreement be entered into with the City to resolve City jurisdiction, adding also that he did not like 16.1 and 16.2 of the agreement as there is no signature block for the City even though the provisions recite agreements with the City. He believed there should also be an agreement by the property owner to waive objections to the City withholding inspections, permits, or COs, in the event of a default. Mr. Dunckel was not sure, in the absence of the waiver, that the City has the power and authority to withhold inspections, etc. Mr. Lochrie agreed his client would execute a similar agreement per Mr. Dunckel's suggestion.

Mr. Lochrie outlined the County's proposal with regard to the building permit process, i.e., permission was given to encroach on the County's corner cord as long as no encroachment begins below 20'. The developer will be obligated to show the County their building plans for approval, with the City ensuring the building plans are not altered.

Mr. Irvine asked if the City could dedicate its right-of-way, giving a three-dimensional right-of-way grant on the corner cord, in order to minimize the City's participation in "unusual" agreements. Mr. Lochrie agreed that is essentially the purpose of the agreement, although it is being done through the County instead of the City.

**Motion** made by Mr. Dunckel, seconded by Mr. Irvine, to recommend approval of execution of the County's Encroachment Agreement, coupled with the City preparing an Encroachment Agreement substantially similar to the County's (with modifications with regard to the property owner's waiver of rights relative to certificates of occupancy, inspections, etc.) and making indemnification and

insurance provisions in favor of the City. In a voice vote, the motion passed unanimously.

**ITEM SIX:**                      **VACATION OF A PORTION OF SW 3 AVENUE**

Address or General Location: SW 3 Avenue, from SW 4 Court (north) to the New River

Mr. Volpi read into the record an email received from Jeff Lucas, Fort Lauderdale Fire Department, as follows:

The Fire Department does not recommend that Item Six be allowed due to Fire Department access problems that will arise from the existing buildings that share 3<sup>rd</sup> Avenue for Fire Department access as defined in NFTA 1, Chapter 1.8., unless the applicant has provided a Fire Department access plan that complies with the Fire Code for all structures, new and existing, that will be affected by this vacation on Southwest 3<sup>rd</sup> Avenue.

Mr. Lochrie gave an overview of the entire project, further advising that the developer has hired a fire consultant to bring the actual use up to higher standards than those currently existing on the site as well as to address the access issue.

Mr. Dunckel confirmed that, in conjunction with the vacation of 3<sup>rd</sup> Avenue, there would be retention of utility, pedestrian, and governmental services easements. The developer has agreed to maintaining the landscaping, irrigation, and trash removal on that portion of Riverwalk

A pedestrian and utility easement will be dedicated to the City adding 5,000 square feet to the current easement area. A proposed turnaround is being discussed similar to others located on the Riverwalk, which the developer prefers for pedestrian use; however, they will work with the Fire Department in that regard.

A cross-section of the pedestrian area was shown with an additional ten feet on the west side of the easement and six feet on the east side – creating a full 31' easement.

Mr. Darmanin noted there are utilities in the easement which the City is proposing to vacate; however, looking at it from a utilities point of view, he suggested those utilities be moved with all connections coming from the abutting streets. Mr. Lochrie indicated that would not be a problem.

At the south end of Riverwalk, the area to be vacated will be blocked off to vehicular traffic, but allow emergency vehicle access.

Mr. Lochrie noted that the buildings will be set significantly farther back than otherwise required; the utility/pedestrian easement, in lieu of being 50', will be 31'.

Mr. Levine expressed concern with giving up a 50 foot right-of-way to get back 30' for pedestrian access, as well as how marine activities will be handled. In concept, he was in favor of the project, but wants to see the details worked out. He would like to see as much public access as possible without affecting the project.

Mr. Fajardo asked how the portion of Riverwalk accessed through the building will work and was advised that it will be continually open with 24-hour on-site security.

Ground level, building to building, pedestrian access will be 47'. Mr. Levine preferred to trade 50' of right-a-way for 50' of grade level pedestrian access, maintaining the same profile for pedestrian access. Mr. Lochrie indicated it would be necessary to give up approximately four feet of retail space to accommodate that request. Mr. Dunckel asked at what level encroachment starts into the governmental services easement, anticipating truck access and was advised by Mr. Lochrie that the 30 foot line goes "straight to the sky."

Mr. Darmanin reiterated the Committee's desire to keep 30' to the skies to provide vehicle access and remove the utilities. Mr. Dunckel's view was this vacation should be independent of the Riverwalk dedications as they should not be in the business of allowing vacations if the City is paid "x" or a developer does "y or z." He added that philosophically he would like to see the full 50' retained as a pedestrian easement. He noted that in some instances they would not be able to vacate on the right unless moving the utilities to the left side is allowed.

Mr. Dunckel recapped the Committee's discussions favoring approval subject to retention or a dedication of the pedestrian easement with a 50' width, the retention or dedication of a utility easement and governmental services easement

at 30', and the 50' widens at a height of 70'. There would be a requirement for the developer to minimally reduce the depth of the retail and office space.

Mr. Irvine suggested even though they desire 50', he did not think anyone would be opposed to a reasonable realignment or shifting. He also asked about 2<sup>nd</sup> Avenue, and if it is the developer's intention to grant a pedestrian easement along the railroad tracks. Mr. Lochrie agreed that would not be a problem as long as the site is not exclusive due to utilities. Mr. Irvine wanted to ensure the public has a perpetual right along there to access Riverwalk, eliminating the possibility of a future owner deciding to gate off or block access to that area. Discussion continued regarding avoiding pedestrians mixing with delivery trucks. Mr. Boteck stated there is an existing sidewalk.

Mr. Dunckel explained he was also looking for a prohibition against the fuel trucks fueling vessels at that location and was assured by Mr. Lochrie that there is fuel dock which will accommodate that service.

Mr. Levine noted that from the building, if there is a 15' pedestrian access easement along the sidewalk area, it would not interfere with the driveway as there appears to be more than 15' between the curb of the driveway and the property line.

**Motion** made by Mr. Dunckell, seconded by Mr. Darmanin, to recommend approval of the vacation of 3<sup>rd</sup> Avenue, subject to the following:

- 1) Dedication of a pedestrian easement 50' in width,
- 2) dedication of a utility easement 30' in width,
- 3) dedication of a governmental services easement for police, EMS, fire, garbage, and postal truck access,
- 4) relocation of the existing utilities,
- 5) creation of a pedestrian easement on the vacated portion of SW 2<sup>nd</sup>, that pedestrian easement being no less than ten nor more than 15 in width,
- 6) at the intersection of 3<sup>rd</sup> and 4<sup>th</sup> Streets, the specifics with regard to preventing vehicles in general going through there be worked out between Engineering and DRC; and,
- 7) both pedestrian easements be maintained by the developer.

"Mr. Fajardo had indicated that while the project had some interesting aspects, more review was required before planning could support the project, and therefore he could not support it at this point in time."

In a voice vote, the motion passed (with Mr. Fajardo dissenting).

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There being no further business to come before the Committee the meeting adjourned at 11:35 a.m.